

## BOATING AND AVIATION OPERATION SAFETY ACT OF 1995

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NOVEMBER 20, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. GEKAS, from the Committee on the Judiciary,  
submitted the following

### R E P O R T

[To accompany H.R. 234]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 234) to amend title 11 of the United States Code to make nondischargeable a debt for death or injury caused by the debtor's operation of watercraft or aircraft while intoxicated, having considered the same, report favorably thereon with a technical amendment and recommend that the bill as amended do pass.

The amendment (stated in terms of the page and line number of the introduced bill) is as follows:

Page 1, line 5, strike "1994" and insert "1995".

#### PURPOSE AND SUMMARY

The purpose of H.R. 234, the "Boating and Aviation Operation Safety Act of 1995," is to make nondischargeable in bankruptcy a debt for death or personal injury caused by the debtor's operation of a watercraft or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

Debts arising from the debtor's operation of a "motor vehicle" while intoxicated are already nondischargeable under Sec. 523(a)(9) of 11 U.S.C., the Bankruptcy Code. The need for legislation arises from the fact that Congress has not explicitly addressed the issue of whether Sec. 523(a)(9) applies to watercraft and aircraft—and courts in three different jurisdictions have been divided on the question of whether Congress originally intended to include

watercraft and aircraft within the term “motor vehicle.” H.R. 234 simply amends 11 U.S.C. 523(a)(9) by inserting “watercraft, or aircraft” after “motor vehicle” to give clear expression to an important public policy and make Congressional intent more explicit.

#### BACKGROUND AND NEED FOR THE LEGISLATION

Sec. 523(a) of the Bankruptcy Code provides a list of debts that will be nondischargeable at the conclusion of the bankruptcy process. It includes those arising from “death or personal injury caused by the debtor’s operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.” (Sec. 523(a)(9)) This provision is made applicable to personal bankruptcies filed under various Bankruptcy Code chapters—including both Chapter 7 (liquidation) and Chapter 13 (adjustment of debts of an individual with regular income).

In the three reported cases interpreting Sec. 523(a)(9), the courts are divided. A Florida case, *Radivoj v. Williams (In re Williams)*, 101 B.R. 356 (Bankr. S.D. Fla. 1989) holds that “the intent of Congress was to protect the public from drunken drivers. In this context the Court finds little distinction between a highway, an airway, and a waterway, or between an automobile, an airplane, and a boat.” Accordingly, “[a] motorboat is a motor vehicle within the meaning of section 523(a)(9).” The District Court affirmed the bankruptcy court’s judgment, observing that “Congress intended to give effect to a national public policy against drunk driving.” *Williams v. Radivoj*, 111 B.R. 361 at 362 (S.D. Fla. 1989).

In a later case—*Willison v. Race (In re Race)*, 159 B.R. 857 (Bankr. W.D. Mo. 1993)—from Missouri, however, the bankruptcy court held that a motorboat or watercraft could not fall within the meaning of “motor vehicle” as that term presently exists within Sec. 523. The court found support for its position in the legislative history, where “[t]he entire discussion is framed within the context of drunken automobile drivers.” It also relied upon the settled doctrine that the exceptions to discharge found in Sec. 523 must be narrowly construed against an objecting creditor and liberally in favor of the debtor, and on recent Supreme Court pronouncements that the plain meaning rule must be the first applied in the statutory construction of the Bankruptcy Code.

In a third case, *Boyce v. Greenway (In re Greenway)*, 180 B.R. 179 (W.D. Texas 1995), a United States District Court in Texas held that a motorboat was indeed a motor vehicle within the meaning of the bankruptcy statute; the debtor’s obligation for wrongful death and personal injuries arising from its operation while intoxicated was accordingly nondischargeable. The court observed, “Although both sides present statutory construction arguments to support their position, the Court finds that neither is more persuasive than the other.” Unable to see any reason “why Congress would have been concerned with drunk driving in one context and not the other”, the federal district court in Texas agreed with the federal district court in Florida that “Congress was concerned with the consequences of drunk driving, and not the means.”

Having previously made the policy judgment that the equities of persons injured by drunk drivers outweigh the responsible debtor’s interest in a fresh start, it is incumbent upon Congress at this time

to clarify that the policy applies not only on land but also on the water and in the air—thus bringing to an end the conflicting opinions in such cases.

The same considerations that lead us to bar intoxicated drivers of land vehicles from avoiding liability by filing for bankruptcy protection also fully justify requiring operators of watercraft and aircraft to bear continued responsibility for the injuries and deaths that they cause. Although we recognize that affording honest debtors the opportunity for a fresh start is an important bankruptcy law objective, the equities of those whose unlawful conduct poses major risks for society must be viewed as subordinate to the equities of their victims. Those who suffer injuries or lose loved ones as a result of intoxicated driving, boating, and flying have a moral claim to compensation that bankruptcy law must not extinguish.

An exception to discharge clearly embracing debts that result from intoxicated operation of watercraft and aircraft—in addition to land vehicles—has both practical and symbolic significance. Viewed from a practical standpoint, we close a loophole that (1) gives intoxicated watercraft and aircraft operators preferred treatment over intoxicated drivers, and (2) denies victims of alcohol and drug related boat and plane accidents rights accorded automobile accident victims. Viewed from a symbolic standpoint, we make an important statement about the culpability of those who combine alcohol or drugs with boating or flying.

The intoxicated operator of watercraft and aircraft—like the intoxicated driver—greatly endangers innocent individuals. A Bankruptcy Code amendment can contribute, in a modest way, to the national movement against such conduct. By denying the protections of the discharge to those who clearly do not deserve it, we add our voice to those of others who seek to discourage such dangerous, antisocial behavior.

#### HEARING

The Committee's Subcommittee on Commercial and Administrative Law held a hearing on H.R. 234 on July 13, 1995. Testimony was received from Representative Vernon J. Ehlers of Michigan, the sponsor of H.R. 234, Stephen H. Case, Vice Chair of the Legislative Committee of the National Bankruptcy Conference, Gerald M. O'Donnell, President of the National Association of Chapter 13 Trustees, and Bruce A. Gilmore, Director of Boating Administration, Maryland Department of Natural Resources.

#### COMMITTEE CONSIDERATION

On September 14, 1995, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported the bill H.R. 234, without amendment, by voice vote, a quorum being present. On October 31, 1995, the Committee met in open session and ordered reported the bill H.R. 234, without amendment, by voice vote, a quorum being present. Staff was directed to make any technical and conforming changes and, accordingly, "1994" was stricken in the title of the bill and "1995" was inserted in lieu thereof.

# COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 234, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE  
*Washington, DC, November 3, 1995.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 234, the Boating and Aviation Operation Safety Act of 1995, as ordered reported by the House Committee on the Judiciary on October 31, 1995. CBO estimates that enacting this legislation would result in no costs to the federal government or to state or local governments. Enacting H.R. 234 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply to the bill.

Under current law, if a person causes death or injury by operating a motor vehicle while intoxicated and incurs debt as a result of that negligence, such debt cannot be discharged in bankruptcy. H.R. 234 would amend section 523 of the bankruptcy code to clarify that watercraft and aircraft would generally be treated as motor vehicles in such cases. CBO estimates that enacting the bill would result in no budgetary costs because the bill's provisions would affect only the private parties involved in those legal actions.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, Director).

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 234 will have no significant inflationary impact on prices and costs in the national economy.

## SECTION-BY-SECTION ANALYSIS

The bill would amend Section 523(a)(9) of the Bankruptcy Code, to make nondischargeable a debt for death or personal injury caused by the debtor's operation of a watercraft or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

**SECTION 523 OF TITLE 11, UNITED STATES CODE****§ 523. Exceptions to discharge**

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) \* \* \*

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(9) for death or personal injury caused by the debtor's operation of a motor vehicle, *watercraft, or aircraft* if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

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